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PRESS RELEASE FOR IMMEDIATE PUBLICATION

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In re: Salisbury Police Department K-9 Animal Cruelty Investigation

Introduction:

On or about March 2, 2021, Chief Jerry Stokes of the Salisbury Police Department held a press conference and referenced an incident involving K-9 Officer Zuul and his handler, an officer with the Salisbury Police Department, recently identified as now former Officer James Hampton. Chief Stokes referenced a video that involved a K-9 training incident and said that the officer involved had been administratively separated from K-9 Officer Zuul. Chief Stokes stated that the matter was being investigated by an outside agency.

On or about March 3, 2021, the Rowan County District Attorney's Office was notified by Chief Stokes about a video involving a K-9 handler and his assigned K-9 that had been acquired by the media. The video was recorded on or about September 28, 2020, and the Rowan County District Attorney's Office was not notified about the incident or video prior to the release of the video by the news media in March 2021. Thereafter, the Rowan County District Attorney's Office contacted the North Carolina State Bureau of Investigation to inquire if they would initiate a criminal investigation in the matter. This was necessary since our office was not provided a criminal investigation to review because the City of Salisbury determined this was a personnel matter. The North Carolina State Bureau of Investigation declined to initiate a criminal investigation unless there was evidence at the time to believe the incident rose to the level of a potential felony offense. There was no reason to believe the evidence supported a felony offense.

After the North Carolina State Bureau of Investigation declined to investigate, the Rowan County District Attorney's Office contacted the Rowan County Sheriff's Office to inquire if they would initiate a criminal investigation, as the Rowan County Sheriff's Office had jurisdiction. As a result of a mutual aid agreement with the Rowan County Sheriff's Office, the Iredell County Sheriff's Office conducted a criminal investigation into this matter.

The Rowan County District Attorney's Office's role is limited to reviewing whether there is sufficient evidence to prove beyond a reasonable doubt a violation of criminal law. Our review does not involve determining if Salisbury Police Department policies and procedures were violated. The fact that an investigation or an act may be controversial does not mean that criminal prosecution is warranted. Even if the State of North Carolina believes an act was avoidable or that

an officer did not follow expected procedures, that does not necessarily make the act criminal in nature. In other words, not every bad act is a criminal act, and we must turn to criminal law statutes and case law to determine if there is sufficient evidence that a crime has been committed.

Details of the Investigation

During the course of the criminal investigation, investigators with the Iredell County Sheriff's Office interviewed K-9 Officer Zuul's former handler, who is a Sergeant with the Salisbury Police Department. The Sergeant stated that he was a canine officer with Officer Hampton when Officer Hampton had another K-9 partner. He stated that he never saw any issues with Officer Hampton and his previously assigned K-9 partner. The Sergeant stated that he was assigned K-9 Officer Zuul from October 2018 until May or June 2020. He stated that when he was promoted, K-9 Officer Zuul was placed with Officer Hampton in June 2020. The Sergeant stated that he was contacted by a Lieutenant in September or October 2020 to keep K-9 Officer Zuul. He stated that when he received K-9 Officer Zuul back (*in September or October 2020*), he was healthy and did not have any injuries.

Another Sergeant, who was Officer Hampton's supervisor at the time, stated that Officer Hampton had been a canine officer for several years. He stated that Officer Hampton loved his canines and had paid thousands of dollars out of his own pocket for veterinary bills for his previously assigned K-9.

A Lieutenant with the K-9 unit of the Salisbury Police Department, who reviewed the incident, stated that he did not feel that Officer Hampton exhibited any bad intent or malice, but did believe that K-9 Officer Zuul was disciplined incorrectly.

A K-9 officer with the Salisbury Police Department, who recorded the video of the incident, stated that he was present for the training on September 28, 2020. He stated that during the training exercise, K-9 Officer Zuul got out of the vehicle when he was not supposed to do so. He stated that K-9 Officer Zuul was not the most disciplined dog, which can be frustrating in training. The K-9 officer stated that he had received K-9 training at another facility and the disciplinary choke technique that he was trained in involved grabbing the canine's collar with both hands and lifting the canine in front of the handler (with the canine's rear legs between the handler's legs) then lifting the canine up and away from the handler. He stated that in his opinion, Officer Hampton's discipline was excessive and not necessary.

A second K-9 officer with the Salisbury Police Department, who was present for the training on September 28, 2020, stated that during the exercise, K-9 Officer Zuul exited the vehicle without being commanded to do so. He stated that in his opinion, he did not think Officer Hampton meant to hurt K-9 Officer Zuul, but he thought the discipline efforts went too far.

A third K-9 officer with the Salisbury Police Department, who also was present for the training on September 28, 2020, stated that the training on this date was designed to test the canines' obedience and response. During the first part of the exercise, the canine was not supposed to leave the car. However, he stated that K-9 Officer Zuul exited the vehicle without being commanded to do so. The K-9 officer stated that Officer Hampton then responded with the discipline, which initially did

not work since K-9 Officer Zuul “kicked out.” As a result, he stated that Officer Hampton escalated the level of discipline. The K-9 officer stated that K-9 Officer Zuul was not injured during this incident. He stated that the training exercise occurred again on this same date and K-9 Officer Zuul completed it correctly and without incident.

Investigators interviewed the President of a canine training facility. He stated that the methods they teach handlers to discipline a dog or to correct their behavior vary somewhat with each team. He stated that often, they utilize a variety of tools and techniques, as each dog and handler team is unique. He stated that the techniques in the video from September 28, 2020 are unwarranted and outdated, but have been accepted by small groups for years and have been used by the Salisbury Police Department since he trained with them about 25 years ago. He stated that in his opinion, the techniques have not proven to be useful and are neither common practice nor industry standard.

Investigators interviewed another President of a canine training facility. He stated that he has observed Officer Hampton and K-9 Officer Zuul work together at some other trainings and that they did well together. He stated that in his opinion, the incident was an overcorrection of the canine.

On March 2, 2021, the City of Salisbury confirmed through a statement on their website that “the canine was not harmed...and suffered no effects from this incident.” On March 4, 2021, K-9 Officer Zuul was examined by a veterinarian with the Concord Parkway Animal Hospital. The veterinary records noted: semi-annual exam; is doing well; had an incident that involved his neck in October of 2020 (*referring to the September 28, 2020 incident*); is not having any clinical signs at this time. Additional notations stated that he had no obvious abnormal lung sounds, no discomfort on flexion and extension of his neck or lateral movement to the right and left, no pain on flexion or extension of his hips, his shoulders are well muscled, and he exhibited no discomfort on manipulation. The veterinarian’s conclusion was that there was no obvious musculoskeletal or neurologic damage from the incident and there was no reason K-9 Officer Zuul should not be trained for police work.

In reviewing a copy of the video from September 28, 2020, K-9 Officer Zuul does not appear injured and at the end of the video (immediately after the discipline has occurred) he is in fact alert in the back seat of the patrol vehicle. There is no indication from the video or from the investigation that K-9 Officer Zuul made any noises that may indicate he was in pain (ex. whimpering, whining, crying). Furthermore, former Officer Hampton, who appears to be frustrated that K-9 Officer Zuul did not follow his initial instructions, did not display any inappropriate or foul language towards his canine to support an intent to harm him.

The comments by the bystanders in the video, while clearly appearing to be inappropriate, do not rise to the level of committing a criminal offense by aiding and abetting or by acting in concert. The bystanders did not knowingly advise, instigate, encourage, procure, or aid another person to commit a crime, nor did the actions or statements cause or contribute to the commission of a crime by another person. To be guilty of a crime under the theory of aiding and abetting or acting in concert, a person must aid or actively encourage the person committing a crime or in some way communicate to the person their intention to assist in the commission of a crime.

Legal Standard Analysis

The applicable law as it relates to this specific incident is N.C.G.S. 14-360 (cruelty to animals), N.C.G.S. 14-163.1 (assault a law enforcement agency animal), and Rowan County local ordinance Section 5-41(b) (cruelty to animals).

Pursuant to N.C.G.S. 14-360 (cruelty to animals), the State of North Carolina must prove the following element(s) beyond a reasonable doubt: a person intentionally *overdrive, overload, wound, injure, torment, kill, or deprive of necessary sustenance*, or cause or procure to be overdriven, overloaded, wounded, injured, tormented, killed, or deprived of necessary sustenance, any animal. The elements of “torture, torment, and cruelly” are defined by statute as any act, omission, or neglect *causing or permitting unjustifiable pain, suffering, or death*. The State cannot meet its burden for any of these elements. There is no evidence that K-9 Officer Zuul was wounded, injured or suffered pain as a result of this incident. In addition, to be actionable as a crime under this statute, the person must intentionally commit an act knowingly and without justifiable excuse. Significantly, pursuant to N.C.G.S. 14-360(c)(2), this section shall not apply to lawful activities conducted for the purposes of training.

Pursuant to N.C.G.S. 14-163.1 (assault a law enforcement agency animal), the State of North Carolina must prove that a person who knows or has reason to know that an animal is a law enforcement agency animal...willfully causes or attempts to cause *harm* to the animal. The statute defines harm as any *injury, illness, or other physiological impairment, or any behavioral impairment* that impedes or interferes with duties performed by a law enforcement agency animal. No evidence has been discovered which shows that K-9 Officer Zuul was injured, that he suffered any illness, or that he developed any physiological or behavioral impairment as a result of this incident. Furthermore, the State would have to prove beyond a reasonable doubt that former Officer Hampton had the requisite criminal intent to attempt to cause harm to K-9 Officer Zuul. Based on the totality of the circumstances, there is insufficient evidence to support this finding.

Pursuant to Rowan County local ordinance Section 5-41(b) (cruelty to animals), no person shall *beat, torment, overload, overwork, tease, molest, or bait an animal*. “Beat” is not defined in the local ordinance. Merriam-Webster defines “beat” as to strike repeatedly. There is no evidence that former Officer Hampton beat K-9 Officer Zuul repeatedly during this incident.

Caselaw

In *State vs. Fowler*, 22 N.C. App. 144 (1974), the State’s evidence consisted of two neighbors of the defendant. One neighbor testified that she observed the defendant beating his dog and tying it up and she could hear the dog hollering. The neighbor observed the defendant’s wife fill a hole in the ground with water from a hose. She then observed the defendant place the dog in the water-filled hole and submerge its head. The defendant would hold the dog’s head under for some period of time and then bring the dog’s head up. The defendant repeated this process for about 15 to 20 minutes. During this time, the defendant’s wife kept the hole filled with water. Following this, they untied the dog, hit it once, kicked it once, and tied it to a pole near the water-filled hole. The neighbor testified on cross-examination that she knew that the defendant and his wife were training the dogs. While she did not approve of the method employed, she stated that they loved their dogs

very much and looked after them just about the way some people look after their children. Another neighbor testified to substantially the same information. The defendant's evidence tended to show that he and his wife were professional dog trainers. The dog involved in the incident in question had been digging holes in the backyard and the defendant and his wife had attempted to stop him from doing this. At first, several less severe measures were tried in an effort to break the dog from digging holes in the yard. All of these methods were unsuccessful. Finally, the defendant used the method described by the neighbors.

The defendant argued that a beating inflicted for corrective or disciplinary purposes without an evil motive is not a crime, even if painful and even if excessive. The Court noted that to be punishable as a violation of N.C.G.S. 14-360, the act must first be willful, which means more than intentional. It means without just cause, excuse, or justification. The Court stated that the jury should have been instructed that if it believed the defendant inflicted the punishment on his animal in a good faith effort to train him, it should return a verdict of not guilty. In addition, the Court stated that the jury should have been instructed that if it believed the defendant's evidence, that the punishment was administered for a disciplinary purpose, it should return a verdict of not guilty.

Similarly, in *Regalado vs. United States*, 572 A.2d 416 (1990), the Court made clear that statutes enacted for the protection of animals from cruelty were not intended to place unreasonable restrictions on the infliction of such pain as may be necessary for the training or discipline of an animal.

Conclusion

Our office, led by a team of senior prosecutors, conducted a thorough review of the evidence and applicable law and consulted with the investigators. In any investigation, the determination of whether to charge and what charges may be appropriate must be guided by the specific facts.

The investigation revealed that former Officer Hampton provided discipline to K-9 Officer Zuul that was not done in a manner that meets current industry training standards. However, we must determine whether his conduct violates the applicable criminal laws. While it does not appear that K-9 Officer Zuul was seen by a veterinarian until March 4, 2021, his former handler stated that when he received K-9 Officer Zuul back in September or October 2020, after the incident occurred, he did not have any injuries. There is no evidence to support that K-9 Officer Zuul was in pain as a result of this incident. Several individuals who were interviewed were asked about any injuries on K-9 Officer Zuul, and no one reported any injuries that occurred to him as a result of the training incident on September 28, 2020. Furthermore, the veterinarian from Concord Parkway Animal Hospital determined that there was no obvious musculoskeletal or neurologic damage from the incident and there was no reason K-9 Officer Zuul should not be trained for police work.

After reviewing the video numerous times, as well as the investigation conducted by the Iredell County Sheriff's Office, and considering *State vs. Fowler* and *Regalado vs. United States*, we have determined that the conduct depicted on the video, while disturbing, does not meet the elements of the applicable statutes. We therefore concur with the investigators who conducted the criminal investigation that criminal charges are not warranted.

The Rowan County District Attorney's Office does not condone the training and disciplinary techniques that were utilized on September 28, 2020. A President from one of the canine training facilities commented that the K-9 community deserves better, and we wholeheartedly agree. The Salisbury Police Department stated in a press release on or about March 31, 2021 that they will continue to review and make the necessary changes to their K-9 training operations, policies and procedures in order to align with industry best practices.

Brandy L. Cook
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